In the High Court of Judicature at Madras

Dated: 14.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM

and

The Honourable Mr.Justice S.TAMILVANAN

Writ Appeal No.548 of 2002

and WAMP.No.3345 of 2002

RM.Govindarajan ..Appellant

..vs..

Madurai City Municipal
Corporation, Madurai,
represented by its
Commissioner. ..Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the Order passed in W.P.No.21685 of 1993 dated 19.01.2001 filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondent herein, its officers, men and servants to forbear from demolishing the whole or any part of the building bearing door No.3 A/2, Ahimsapuram 8th Street, new Extension, Madurai and comprised in TS.No.1686/5, in Madurai Chellur Kattabomman Nagar, Vanchinathan Street.

For Appellant : Mr.T.Srinivasa Raghavan

For Respondent : Mr.P.Srinivas

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.,)

The above Writ Appeal is directed against the Order of the learned single Judge dated 19.01.2001 made in W.P.No.21685 of 1993, in and by which, the learned Judge, after considering the claim of the petitioner and the stand taken by the Madurai City Municipal Corporation, dismissed the writ petition.

2. Heard the learned counsel for the appellant as well as the respondent.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. It is the claim of the appellant / petitioner that it was the petitioner, who had put up building in his patta land. In such circumstances, the respondent Municipality has no power to demolish even a portion of the building, which lay upon the land, which was recorded as poramboke land. A counter affidavit filed by the Municipality before the learned Judge stating that there had been floods in the City of Madurai, that several residential areas got inundated and submerged due to the blockade of rain water channel and other drainage channels as well as irrigation channels and as a result, several houses were submerged. It is further stated that in view of the same, it became imperative to remove all encroachments in the channel area with a view to avoid recurrence of floods. The learned Judge accepted the factual information furnished by the Corporation and rejected the stand taken by the learned counsel for the petitioner.

4. Learned counsel also relied on the decision of the Division Bench of this Court reported in Commissioner ..vs.. Chandrasekaran (1975(2) MLJ 251) before the learned single Judge as well as before us to show that if the land belongs to the Government, the Government alone has power and the Municipality has no power to take action.

5. We have verified the factual details available in the Division Bench decision relied on by the learned counsel for the appellant as well as the details mentioned in the counter affidavit filed by the Commissioner, Madurai City Municipal Corporation, which was relied on by the learned Judge. Considering the explanation offered by the Commissioner and taking note of the urgency in clearing the obstructions for free flow of water in the channels, we are of the view that the action taken by the Commissioner cannot be faulted with. We are in agreement with the conclusion arrived at by the learned single Judge and unable to accept the stand taken by the appellant. Consequently, the writ appeal fails and the same is dismissed. No costs. Consequently, connected WAMP.is closed.

Sd/-
Asst. Registrar.

WEB COPY

/true copy/

Sub Asst. Registrar.

gl

https://hcservices.ecourts.gov.in/hcservices/

To
The Commissioner,
Madurai City Municipal
Corporation, Madurai.
+ 1 CC To Mr. P.Srinivas, Advocate SR NO. 62738

Judgment in Writ Appeal No.548 of 2002

ntk[co]
Gp/22.12.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/